

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
DOCKET NO. 3:15-cv-00589-FDW-DCK

COMMERCIAL CREDIT GROUP, INC.,)
)
Plaintiff,)
)
vs.)
)
ANCHOR ENVIRONMENTAL AAA)
SERVICES a/k/a ANCHOR)
ENVIRONMENTAL AAA SERVICES,)
INC., JIMMY SKOVGARD, and)
BEVERLY SUE SKOVGARD,)
)
Defendants.)
)
_____)

ORDER

This matter having come before the Court by way of motion filed by Plaintiff, Commercial Credit Group Inc.; Doc. No. 20 (“Motion”) seeking summary judgment as to its breach of contract claim against Defendants as well as Defendants’ counterclaims and ECOA-based affirmative defense asserting, among other things, damages resulting from CCG’s breach of peace (collectively, Defendants’ “Counterclaims”), and the Motion having come on for hearing on October 3, 2016 before the Honorable Frank D. Whitney, and Defendants having filed their Response in Opposition to Plaintiff’s Motion for Summary Judgment (Doc. No. 31), together with supporting affidavits and exhibits, and Plaintiff, Commercial Credit Group Inc. (“CCG”), having appeared in support of its Motion through its counsel, Robert Qulia, and Defendants, having appeared in opposition to the Motion through their counsel, Walter L. Bowers, Jr.¹

¹ The Court issued an oral ruling and a short order memorializing that oral ruling (Doc. No. 36), noting that this memorandum order explaining the Court’s ruling would follow.

After hearing and considering the parties' respective filings and arguments of counsel, and after due deliberation, the Court hereby denies Defendants' defense of impossibility or impracticability as untimely, and denies Defendant, Beverly Skovgard's summary judgment motion (Doc. No. 32).

In its breach of contract claim against the Defendants, CCG seeks to recover judgment for the amount owed on its equipment loans to Defendant, Anchor Environmental AAA Services a/k/a Anchor Environmental AAA Services, Inc. ("Anchor"). CCG's loans, evidenced by the seven Negotiable Promissory Notes attached as "Exhibit A" to CCG's Motion (the "Loans"), are secured by commercial equipment presently held by CCG in storage in Wyoming (the "Equipment"), awaiting sale.

The Court finds that there is no genuine issue of fact remaining for trial with respect to CCG's breach of contract claim, and concludes that the valid and enforceable amount owed to CCG on the Loans is \$2,062,900.76 plus legal expenses in the amount of \$165,032.00 and interest in the amount of \$506.07 per day from November 2, 2015 to the date of CCG's receipt of payment. Ultimately, sale proceeds received by CCG from the Equipment will be applied to offset, reduce or satisfy said amount. In that event, CCG shall file a partial or full satisfaction of judgment which reflects the Equipment sale proceeds received by CCG.

Defendants' Counterclaims specifically alleging breach of peace, good faith, and Defendant Beverly Skovgard's ECOA-based affirmative defense, shall be tried separately before this Court, as provided herein. Damages, if any, to which Defendants' may be entitled as a result of their Counterclaims, shall not constitute an offset to the amount determined herein to be validly owed to CCG on its breach of contract claim. Accordingly, it is hereby **ORDERED** that:

1. CCG is hereby granted summary judgment solely as to its breach of contract claim against Defendants, Anchor Environmental AAA Services a/k/a Anchor Environmental AAA Services, Inc. (“Anchor”) and Jimmy Skovgard, and is hereby awarded the principal amount of \$2,062,900.76 plus legal expenses in the amount of \$165,032.00 and interest in the amount of \$506.07 per day from November 2, 2015, to the date of CCG’s receipt of payment thereon, said judgment to be deemed final with respect to CCG’s breach of contract claim against Defendants Anchor and Jimmy Skovgard;
2. The Clerk is hereby directed to enter judgment on CCG’s breach of contract claim in accordance with the above;
3. Defendant, Beverly Skovgard’s summary judgment motion (Doc. No. 32) and the balance of CCG’s summary judgment Motion are hereby denied; and
4. Defendants’ counterclaims alleging breach of peace and breach of good faith, and Defendant, Beverly Skovgard’s ECOA-based affirmative defense, shall be separately tried before this Court per the Court’s scheduling directions.

IT IS SO ORDERED.

Signed: October 24, 2016

A handwritten signature in black ink, reading "Frank D. Whitney", written over a horizontal line.

Frank D. Whitney
Chief United States District Judge

